SUPREME COURT OF THE UNITED STATES.

No. 898.—October Term, 1926.

Harry R. Alston *vs.* The United States of America.	On Certificate from the United States Circuit Court of Appeals for the Eighth Circuit.

[May 16, 1927.]

Mr. Justice McReynolds delivered the opinion of the Court.

In the United States District Court, Southern District of Iowa, an indictment with three counts, filed December 2, 1924, charged Alston with violating Section 1, Harrison Narcotic Act, approved December 17, 1914, c. 1, 38 Stat. 785, as amended February 24, 1919, c. 18, 40 Stat. 1057, 1130, 1131, by purchasing morphine and cocaine from unstamped packages. He pleaded "guilty" and was sentenced to the penitentiary. A writ of error took the cause to the Circuit Court of Appeals, Eighth Circuit, and it asked our instruction upon certain questions. Thereupon, we required the entire record to be sent here for final determination of the whole matter. § 239, Jud. Code.

Sections 1 and 6 of the Harrison Narcotic Act were amended by the Act of February 24, 1919, and, as thus amended, were re-enacted without change by Sections 1005 and 1006, Revenue Act approved November 23, 1921, c. 136, 42 Stat. 227, 298, 300. The amending Act added the following provisions (among others) to Section 1.

> That there shall be levied, assessed, collected, and paid upon opium, coca leaves, any compound, salt, derivative, or preparation thereof, produced in or imported into the United States, and sold, or removed for consumption or sale, an internal-revenue tax at the rate of 1 cent per ounce, and any fraction of an ounce in a package shall be taxed as an ounce, such

tax to be paid by the importer, manufacturer, producer, or compounder thereof, and to be represented by appropriate stamps, to be provided by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury; and the stamps herein provided shall be so affixed to the bottle or other container as to securely seal the stopper, covering, or wrapper thereof.

The tax imposed by this section shall be in addition to any import duty imposed on the aforesaid drugs.

It shall be unlawful for any person to purchase, sell, dispense, or distribute any of the aforesaid drugs except in the original stamped package or from the original stamped package; and the absence of appropriate tax-paid stamps from any of the aforesaid drugs shall be prima facie evidence of a violation of this section by the person in whose possession same may be found; and the possession of any original stamped package containing any of the aforesaid drugs by any person who has not registered and paid special taxes as required by this section shall be prima facie evidence of liability to such special tax: *Provided* . . .

Section 9 of the original Harrison Act has remained without change. It provides: "That any person who violates or fails to comply with any of the requirements of this Act shall, on conviction, be fined not more than $2,000 or be imprisoned not more than five years, or both, in the discretion of the court."

The judgment of the trial court is assailed upon two grounds: That Congress has failed to prescribe any punishment for the purchase of drugs from unstamped packages, forbidden by amended Section 1. And, that the entire Act, as amended, is invalid because Congress has undertaken thereby to regulate matters beyond its powers and within exclusive control of the States.

Section 9, above quoted, obviously applies to the requirements of the amended Act as well as to those found in the original. The first objection has no merit.

The present cause arises under those provisions of Section 1 which impose a stamp tax on certain drugs and declare it unlawful to purchase or sell them except in or from original stamped packages. These provisions are clearly within the power of Congress to lay taxes and have no necessary connection with

any requirement of the Act which may be subject to reasonable disputation. They do not absolutely prohibit buying or selling; have produced substantial revenue; contain nothing to indicate that by colorable use of taxation Congress is attempting to invade the reserved powers of the States. The impositions are not penalties.

The judgment of the trial court must be

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.